



ITEM NO. \_\_\_\_\_

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## STAFF REPORT

DATE: DECEMBER 20, 2011  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: AMER JAKHER, PUBLIC WORKS/UTILITY SERVICES DIRECTOR  
SUBJECT: SOUTHERN CALIFORNIA EDISON FRANCHISE AGREEMENT

### RECOMMENDED ACTION

It is recommended that the City Council: (i) open the public hearing concerning adoption of an ordinance granting an electric franchise to Southern California Edison; and (ii) after closing the hearing, waive full reading and introduce by title only, an Ordinance of the City Council of the City of Colton, Granting to Southern California Edison Company, its Successors and Assigns, a Franchise to Use and to Construct and Use Poles, Wires, Conduits and Appurtenances in, Along, Across, Upon, Over and Under the Public Streets, Ways, Alleys and Places, as they May Now or Hereafter Exist, within the City of Colton.

### GOAL STATEMENT

The proposed resolution will help implement the City Council's FY 2010-2011 goal to "continue to update policies, ordinances and processes when and as needed."

### BACKGROUND

#### REGULATORY FRAMEWORK

Cities allow public utilities engaged in the distribution and sale of gas, electric or water to lay and maintain pipes, wires and appurtenances to distribute and serve utilities under, along or across a city's streets and public places to allow the common use of facilities through the grant of a franchise. General law cities may grant franchises for this purpose either through a bidding process provided for in the Broughton Act (Public Utilities Code Section 6001 et seq.) or without a bidding process under the Franchise Act of 1937 (Public Utilities Code Section 6201 et seq.). **In no way does this action limit or impact the City's operation as a municipal utility.**

Since a bidding process is not practical in this case, staff has been negotiating with Southern California Edison under the Franchise Act of 1937. The amount of the franchise fee that would be paid to the City under the 1937 Act is the greater of two percent (2%) of (a) the gross annual

receipts of the applicant arising from the use, operation, or possession of the franchise or; (b) one percent (1%) of the gross annual receipts that the applicant derived from the sale of the utility service within the City. Prior to granting a franchise under the 1937 Act, the City Council is required to adopt a resolution of intention to grant a franchise, which the City Council did on December 6, 2011. The next step is for the City Council to hold a public hearing and grant the franchise through the adoption of the ordinance attached to this staff report. The terms of the franchise are heavily constrained by state law, leaving the City very little room to negotiate. The franchise will include the following:

### 1. Franchise Fee

The amount of the franchise fee the City may collect is fixed by State law. Section 6231(c) of the Public Utilities Code establishes the following payment formula for a franchise granted under the Franchise Act of 1937:

*"[T]he applicant, if granted the franchise, will pay to the municipality during the life of the franchise 2 percent (2%) of the applicant's gross annual receipts arising from the use, operation, or possession of the franchise, except that this payment shall be not less than 1 percent (1%) of the applicant's gross annual receipts derived from the sale within limits of the municipality of the utility service for which the franchise is awarded."* [Emphasis added.]

### 2. Term

The City may grant a franchise for as short or as long a term as can be negotiated. (Cal. Pub. Util. Code § 6264.) If no term is specified, State law provides that franchise remains in force indefinitely, unless it is surrendered or abandoned, purchased, taken by eminent domain or forfeited. The Southern California Edison Company is proposing a term of twenty five (25) years. The ultimate length of the franchise term is at the discretion of the City Council, but staff's research indicates that most communities have indeterminate terms and in fact, no franchise agreements were located with terms less than twenty-five (25) years.

### 3. Relocations

In the event the City desires to widen, realign or relocate a street, State law provides that the franchisee pay the cost of relocating its facilities. (Cal. Pub. Util. Code § 6297.) To avoid any confusion, language has been included in the franchise agreement expressly setting forth this requirement. However, that if the relocation is required by a private entity or another utility constructed later in time, such other entity is required to pay the cost of relocating the franchisee's facilities. The City negotiated a broader protection that expands the definition of "public project" and requires the Southern California Edison Company to relocate or remove its facilities at no cost to the City. This is a substantial increase in the protection afforded most communities and conforms with the court's broader interpretation of the Edison's obligations under state law.

#### 4. Compliance with Local Laws; Pavement Repairs

State law requires each franchisee to construct, install, and maintain all pipes, conduits, poles, wires, and appurtenances in accordance and in conformity with all local ordinances. (Cal. Pub. Util. Code § 6294.) Edison is also required to pay the City, on demand, the cost of all repairs to public property made necessary by any of the operations of a franchisee under its franchise. (Cal. Pub. Util. Code § 6295.) The Franchise Agreement also establishes standards for repair of pavement which Edison cuts, and imposes restrictions on cutting pavement that is less than five years old. The franchise requires Edison to coordinate with the Public Works Department when work will be performed within the public streets, including a requirement that the streets be restored to the Director's reasonable satisfaction following the completion of the work. It should be noted that vents for underground facilities may extend above grade, when the vents will be located between the curb and the property line. This is a situation that currently exists in the City.

#### 5. Indemnification and Performance Bonds

The franchise agreement includes an indemnification clause requiring the franchisee to indemnify and hold harmless the City and its officers from all liability. (Cal. Pub. Util. Code § 6296). In addition, franchise requires Edison to post a performance bond with the City to ensure that Edison faithfully fulfills and performs its obligations under the franchise.

### **ISSUES/ANALYSIS**

Representatives of the Southern California Edison Company and the City have been negotiating the terms of a new Franchise Agreement. The negotiations have resulted in a proposed agreement, which is set forth in the ordinance that is attached to this Staff Report. The amount of the franchise fee that the City can require the Southern California Edison Company to pay is established by the State and cannot be changed by the City. The City receives approximately 2% of the gross annual receipts of Southern California Edison Company arising from the use. As is discussed below, the proposed agreement contains terms that are more favorable to the City than the terms of the existing agreement. The proposed term of the agreement is twenty-five (25) years. Staff is recommending that the City Council conduct the first reading of the ordinance granting an electric franchise to Southern California Edison.

### **FISCAL IMPACTS**

Franchise fees received from Southern California Edison have been, and will continue to be, deposited into the City's General Fund. The fees collected in fiscal years 2009-10 and 2010-11 were \$48,086 and \$48,201, respectively. The current year's fee is expected to be received by the end of April 2012.

### **ALTERNATIVES**

1. Provide alternative direction to staff.

**ATTACHMENTS**

Exhibit A – Ordinance Granting Electric Franchise to SCE

## EXHIBIT A

Ordinance Granting Electric Franchise to SCE



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A. The word "Grantee" shall mean the corporation to which the Franchise contemplated in this Ordinance is granted, Southern California Edison Company, and its lawful successors or assigns.

B. The word "City" shall mean the City of Colton, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

C. The word "Streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within the City.

D. The phrase "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, cross arms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, appliances, attachments, appurtenances and any other property located or to be located along, across, upon, over or under the Streets of the City and used or useful, directly or indirectly, for the purpose of transmitting or distributing electricity for all lawful purposes, pursuant to agreements between Grantee and third parties.

E. The phrase "construct and use" shall mean to lay, construct, excavate, encroach, erect, install, reinstall, operate, maintain, use, repair, modify, replace, relocate, or remove any Facilities used for transmitting and distributing electricity for all purposes within the Streets.

F. The term "Facilities" shall mean the poles, wires, conduits and appurtenances, or any of them, of any kind installed or constructed by Grantee as described in section (D) above.

1 G. The word "Franchise" shall mean and include any authorization granted hereunder  
2 in terms of a franchise, privilege, permit, license or otherwise to construct and use poles,  
3 wires, conduits and appurtenances, for transmitting and distributing electricity for any and  
4 all lawful purposes in, along, across, upon, over, and under Streets within the City.

5 SECTION 3: Right to Serve

6  
7 As authorized by the California Constitution and by statute, City owns, operates and  
8 maintains a publicly-owned electric utility. As of the adoption of this Franchise, City's electric  
9 utility provides service to most areas and consumers within the City. In addition to owning,  
10 operating and maintaining today or in the future Facilities that are used to transmit and deliver  
11 electric power to end use customers located outside the City, Grantee currently provides retail  
12 service to the areas of the City and customers not served by City's own utility

13 SECTION 4: Grant of Franchise.

14  
15 (a) Pursuant to and in accordance with the provisions of the Franchise Act of 1937,  
16 Public Utilities Code §6201, *et seq.*, and subject to the terms and conditions set forth herein, the  
17 City hereby grants to Grantee and its lawful successors and assigns a Franchise to construct and  
18 use Facilities for the purposes of transmitting and distributing electricity for any and all lawful  
19 purposes, within the City, upon poles, wires, conduits and appurtenances, as authorized by  
20 Grantee's Certificate of Public Convenience and Necessity, tariff and/or any final decision or  
21 order of the California Public Utilities Commission, pursuant to agreements between Grantee and  
22 third parties, along, across, upon, over and under the Streets within the City of Colton, provided  
23 that nothing in this franchise shall authorize Grantee to provide communications services to any  
24 third party or to use facilities installed or maintained pursuant to this franchise to provide such  
25 communications services.

26 The City may issue a blanket fee permit to Grantee for all work activities of Grantee in the  
27 streets and public right-of way, in lieu of City's standard permitting process, in order to reduce  
28 administrative costs of both City and Grantee. Such blanket fee permit shall be in a form

1 provided by Grantee to City, but subject to the reasonable review and approval of City.  
2 Notwithstanding the foregoing, City shall be under no obligation whatsoever to issue such blanket  
3 fee permit.

4 (b) With respect to the provision of retail service by Grantee to customers within the  
5 City of Colton, Grantee may provide such service until such time as the City acquires some or all  
6 of Grantee's facilities and elects to deliver electric power to customers formerly served by  
7 Grantee from such facilities. The area included within this Franchise shall be deemed modified to  
8 exclude any area served by facilities which the City acquires from Grantee.

9 (c) Nothing in this Franchise in any way affects or otherwise requires Grantee to  
10 provide, report or otherwise disclose to the City or its agents or other third parties, any  
11 documents, maps, Facilities information, transmission/distribution systems, generating plants,  
12 apparatus inventories, or other records that are considered confidential, privileged, are otherwise  
13 protected or classified as "protected materials" under Federal Energy Regulatory Commission  
14 (FERC) or CPUC Policies, or are defined as Critical Energy Infrastructure Information (CEII)  
15 pursuant to 18 C.F.R. § 388.113(c)(1).

16 (d) This Franchise is granted in lieu of all other franchises owned by Grantee, or by  
17 any successor of Grantee to any rights under this Franchise, for transmitting and distributing  
18 electricity within the limits of the City, as said limits exist at the time of the granting of this  
19 Franchise, and the acceptance of the Franchise hereby granted shall operate as an abandonment of  
20 all franchises within the limits of the City of Colton, as such limits now or may hereafter exist, in  
21 lieu of which this Franchise is granted.

22 SECTION 5: Franchise Term.

23 This Franchise term shall be for a period of twenty-five (25) years from the effective date  
24 as set forth in Section 16, provided that either party may notify the other in writing of a desire to  
25 reopen franchise negotiations to address changes in applicable law which affect the franchise,  
26 and/or the invalidity or unenforceability of any material provision hereof. Pending resolution of  
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1 those negotiations, the existing ordinance shall remain in effect for two years following the date  
2 of notice of the reopened franchise negotiations.

3  
4 SECTION 6: Franchise Fee.

5 (a) Grantee shall pay to the City the sum provided by law, which is presently two  
6 percent (2%) of the gross annual receipts of Grantee arising from the use, operation or possession  
7 of the Franchise; except that this payment shall not be less than one percent (1%) of the gross  
8 annual receipts derived by Grantee from the sale of the electricity within the City.

9  
10 (b) In the event the California Legislature amends the Franchise Act of 1937 or enacts  
11 any other state law which increases the electric franchise payment to cities to a level greater than  
12 that provided in this Section 6, the City shall have the option of prospectively employing the new  
13 legislative formula, which shall apply for the remaining term of the Franchise. If the City  
14 exercises this option, the new legislative formula shall be prospectively applied hereto either (at  
15 the City's sole option) on the effective date of the legislation, or on some date subsequent to the  
16 effective date of the legislation.

17 SECTION 7: Verified Statement of Gross Receipts.

18 (a) The Grantee shall file with the City Clerk of the City of Colton within three (3)  
19 months after the expiration of the calendar year, or fractional calendar year, following the date of  
20 the granting of this Franchise, and within three (3) months after the expiration of each calendar  
21 year thereafter, a verified statement substantially in the form attached hereto as Exhibit "A"  
22 showing in detail the following:

23 (1) The total gross receipts of the Grantee during the preceding calendar year,  
24 or such fractional calendar year, from the sale of electricity within the City;

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26 (2) The total gross receipts of the Grantee during the preceding calendar year,  
27 or such fractional calendar year, from the use, operation or possession of this Franchise; and  
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2 (3) The method and supporting calculations used to calculate the franchise fees  
3 which are payable to the City in accordance with this Franchise, including any municipal public  
4 lands use surcharge payable pursuant to §6350, *et seq.* of the California Public Utilities Code,

5 (b) The Grantee shall pay to the City within fifteen (15) days after the time for filing  
6 said statement, in lawful money of the United States, the aforesaid percentage of its gross receipts  
7 for the calendar year or fractional calendar year, covered by said statement. Any neglect,  
8 omission or refusal by Grantee to file said verified statement, or to pay said percentage at the  
9 times or in the manner herein before provided, unless promptly cured following notice, shall  
10 constitute grounds for the declaration of forfeiture of this Franchise and of all rights of Grantee  
11 hereunder.

12 (c) The City Financial Officer, or any qualified person designated by the City of  
13 Azusa, upon not less than sixty (60) days' prior written notice to Franchisee, may make  
14 examination at the Franchisee's office or offices at any reasonable time during regular business  
15 hours of such books and records of Franchisee, as are reasonably necessary to verify the accuracy  
16 of Franchisee's franchise fee calculation for the prior filing year, set forth in the annual statement  
17 required herein, subject to the following terms and conditions:

18 (1) All books and records subject to examination by the City Financial Officer, or  
19 other qualified person designated by the City of Colton, shall be made available within the  
20 Franchisee's office where they are maintained.

21 (2) Records need not be made available unless and until the City of Colton  
22 executes and delivers to Franchisee written confirmation that the City's request to examine the  
23 books and records is made pursuant to its audit rights herein and written confirmation that City of  
24 Colton shall use the information obtained only for purposes of the audit, shall not disclose any  
25 information it obtains to third parties without the prior written consent of Franchisee, and that it  
26 shall maintain the confidentiality of any information reasonably designated by the Franchisee as  
27 confidential. Nothing herein shall be construed to require Franchisee to make available  
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1 information which constitutes private or confidential information pertaining to specific customers  
2 of Franchisee, without the prior written consent of the customer(s) involved.

3  
4 (3) City of Colton shall provide Franchisee with comprehensive, written results of  
5 its audit. In the event City's audit reveals an error in the Franchise fee amount set forth in the  
6 statement being audited, the following provisions shall apply:

7 (i) If the audit determines that additional Franchise fees are due, and if  
8 Franchisee agrees with such determination, the additional Franchise fees shall be paid within  
9 fifteen (15) business days after receipt of City's written demand Failure to pay such charge shall  
10 be grounds for forfeiture of the Franchise.

11 (ii) If the audit determines that additional franchise fees are due, but  
12 Franchisee disagrees with such determination, payment of the additional Franchise fees shall be  
13 stayed pending Franchisee's appeal of the determination to the City Council, which appeal shall  
14 be filed by Franchisee within thirty (30) days of Franchisee's receipt, from City, of the written  
15 determination that additional Franchise fees are due.

16 (iii) If the audit determines that an overpayment of the Franchise fee  
17 occurred, then City shall refund or apply funds as a credit to future franchise fees due, the amount  
18 of the overpayment within fifteen (15) business days after receipt of Franchisee's written demand.

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20 (4) In the event of a disagreement between the parties, each party shall have all of  
21 the rights and remedies provided by the Franchise and by law.

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23 SECTION SECTION 8: Publication Expenses.

24 The Grantee of this Franchise shall pay to the City a sum of money sufficient to reimburse  
25 it for all publication expenses incurred by it in connection with the granting of this Franchise,  
26 within thirty (30) days after the City shall have furnished Grantee with a written statement of such  
27 expenses. The City Clerk shall cause this Franchise to be published and posted within fifteen (15)  
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1 days after its passage in three (3) public places within the City as required by law.

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3 SECTION 9: Conformity to Rules and Statutory Requirements.

4  
5 The Grantee shall construct and use its Facilities in accordance and in conformity with  
6 applicable statutory requirements and regulatory requirements of the California Public Utilities  
7 Commission, all of the ordinances and rules adopted by the City Council in the exercise of its  
8 police power and not in conflict with the paramount authority of the State or the United States,  
9 and, as to state highways, subject to the laws relating to the location and maintenance of such  
10 Facilities therein.

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12 Grantee shall construct, install, replace and maintain its facilities in accordance with the  
13 rules and regulations adopted by the California Public Utilities Commission, State and Federal  
14 Laws, and as to state highways, subject to the laws relating to the location and maintenance of  
15 such facilities. Before the work of constructing any poles, wires, conduits, and appurtenances by  
16 the Grantee, Grantee shall file with the City Engineer plans showing the location thereof, such  
17 construction shall be approved by the City Engineer, which shall not be unreasonably withheld.

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19 SECTION 10: Removal or Relocation of Facilities.

20 (a) The Grantee shall remove or relocate any Facilities installed, used and maintained  
21 under the Franchise if and when made necessary by any lawful change of grade, alignment or  
22 width of any public Street, way, alley or place, including the construction of any subway, viaduct,  
23 pedestrian tunnel, traffic signal, street lighting facility, or any other public works construction  
24 projects undertaken by the City and as provided in the Public Utilities Code. Such removal or  
25 relocation shall be performed by Grantee without expense to the City. However, Grantee shall not  
26 be required to bear the expense of any removal or relocation made at the request of the City on  
27 behalf of or for the benefit of, any developer or other third party. City will make good-faith  
28 efforts to minimize the occurrence and frequency of projects requiring relocation of Facilities at  
Grantee's expense which have been relocated at Grantee's expense within the previous seven (7)  
years.

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2 (b) City shall endeavor to assist the Grantee with access and a right of entry to private  
3 streets within gated communities located within the City and to all of Grantee's facilities therein,  
4 but City shall have no obligation or responsibility to commence any action in law or equity to  
5 compel any homeowners' association or other entity controlling access to private streets within  
6 gated communities. By accepting this Franchise, Grantee shall be deemed to have acknowledged  
7 that private streets in gated communities that have not been dedicated or offered for dedication to  
8 the City shall not be considered Streets for the purpose of this Franchise.

9 SECTION 11: Indemnification.

10 Grantee shall indemnify and hold harmless the City and its officers, agents and employees  
11 from all liability for damages proximately resulting from any operations under this Franchise, and  
12 shall be liable to the City for all damages proximately resulting from the failure of Grantee to  
13 comply with each and every provision of this Franchise and the Franchise Act of 1937.

14  
15 SECTION 12: Repairs, Excavation and Restoration.

16  
17 The Grantee shall make all repairs to public property made necessary as a direct result of  
18 the operations of the Grantee under the franchise.

19 In the event it is necessary to excavate a street for the purpose of maintaining, replacing or  
20 installing Grantee's facilities where the street has not been paved or repaved for more than five  
21 (5) years prior to Grantee's excavation, the resulting trench shall be repaired in accordance with  
22 the pavement restoration standards described in the then-current edition of the American Public  
23 Works Association Standards promulgated by the Public Works Standards, Inc. Greenbook  
24 Committee, together with any applicable rules and regulations adopted by the California Public  
25 Utilities Commission, State and Federal Laws, and as to state highways, subject to the laws  
26 relating to the location and maintenance of such facilities.

27 Grantee shall not excavate a street for the purpose of maintaining, replacing or installing  
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1 Grantee's facilities within five (5) years after the repaving of the portion of the public street, way,  
2 alley or place that Grantee seeks to excavate, except in the following circumstances:

- 3 - An emergency which endangers life or property;
- 4 - Repair or modification to prevent interruption of essential utility service;
- 5 - Relocation work that is mandated by the City pursuant to this franchise;
- 6 - Service for buildings where no other reasonable means of providing service exists;
- 7 - The public street is scheduled for repaving within one (1) year after the excavation  
8 permit is issued;
- 9 - Potholing to verify utility depth or location; or
- 10 - Other situations deemed by the City to be in the best interest of the general public.

11 If Grantee is issued a permit to excavate within five (5) years of the City's filing of a  
12 notice of completion or acceptance of a new street or within five (5) years after the repaving of  
13 the portion of the public street, way, alley or place, Grantee shall comply with the pavement  
14 restoration standards as described in the City of Colton Standard Drawings and to the satisfaction  
15 of the City Engineer. The repaving may, at the discretion of the City Engineer, cover the entire  
16 width of the street and cover the entire length of the trench plus ten (10) feet at both ends of the  
17 trench.

18 If the trench repair work set forth above becomes defective, meaning that such repair work  
19 does not comply with the Pavement Standards and the failure or defect of such repair is not due to  
20 ordinary wear and tear, City and Grantee shall utilize the following repair protocol:

21 (a) Non Emergency Repairs.

22  
23 City shall provide Grantee with written notice of the defect ("Notice of Defect"). Such  
24 Notice of Defect shall include the exact location of the defect in question. Thereafter, Grantee  
25 shall complete a commercially reasonable temporary repair of the defect. Such temporary repair  
26 shall be completed within three (3) days receipt of the Notice of Defect. Grantee shall then be  
27 required to complete a permanent repair of the defect within forty-five (45) days from Grantee's  
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1 receipt of the Notice of Defect. Nothing set forth herein shall be construed so as to prohibit  
2 Grantee from completing a permanent repair in the time frame set forth for a temporary repair or  
3 in any way preventing the City from extending the repair period in the reasonable exercise of its  
4 discretion, provided that City shall have no obligation to do so.

5 (b) Emergency Repairs.

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7 For the purpose of this Subsection, an "Emergency Defect" shall mean a defect in  
8 previously repaired or restored trench consisting of a three-quarters inch (3/4") or more separation  
9 in grade of the pavement and/or a pavement crack of any length that is three-quarters inch (3/4")  
10 in width. To the extent of an Emergency Defect, City shall provide Grantee with a Notice of  
11 Defect. Thereafter, Grantee shall complete a commercially reasonable temporary repair within  
12 twenty-four (24) hours from receipt of the Notice of Defect. Grantee shall then be required to  
13 complete a permanent repair within forty-five (45) days from receipt of the Notice of Defect.  
14 Nothing set forth herein shall be construed so as to prohibit Grantee from completing a permanent  
15 repair in the time frame set forth for a temporary repair or in any way preventing the City from  
16 extending the repair period in the reasonable exercise of its discretion, provided that City shall  
17 have no obligation to do so.

18 (c) Coordination/Compaction Standards.

19 Grantee shall coordinate its repair activities taken pursuant to this Section with the City by  
20 providing advance notice of any excavation of, or repair to City streets. City shall have the right  
21 to have an inspector present to monitor such repair work and to review and approve compaction  
22 tests prior to the completion of said work.

23 (d) Self Help.

24  
25 If Grantee believes that it will be unable to complete necessary repairs in the specified  
26 time periods, Grantee may request that the City meet and confer with Grantee prior to the  
27 expiration of the applicable time period to determine the cause for the delay. If in the City's  
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1 reasonable opinion, the work could not have been completed within the applicable time period  
2 due to unusual or unforeseen circumstances, and the work is being reasonably prosecuted towards  
3 completion, the City may extend the repair time periods. Alternatively, if Grantee has not  
4 completed repair work as of the expiration of the applicable time period, City shall have right to  
5 complete the necessary repairs that would have been required of Grantee under the applicable  
6 requirements set forth above and Grantee shall reimburse the City for the cost of the repairs.

7 SECTION 13: Sale, Transfer, Assignments, Lease of Franchise.

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9 The Grantee shall file with the City within thirty (30) days after any sale, transfer,  
10 assignment, or lease of this Franchise or any part hereof, or any of the rights or privileges granted  
11 by this Franchise, written evidence of the transaction certified by Grantee or its duly authorized  
12 officers. Payment of any fees due pursuant to Franchise Fee payment provisions shall not be  
13 unreasonably withheld or delayed.

14 SECTION 14: Value of Franchise; Eminent Domain.

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16 (a) This Franchise shall never be given any value before any court or other public  
17 authority in any proceeding of any character in excess of the cost to the Grantee of the necessary  
18 publication and any other sum paid by the City at the time of acquisition.

19 (b) This Franchise shall not in any way or to any extent impair or affect the right of  
20 the City to acquire the property of Grantee installed or constructed pursuant to this Franchise,  
21 either by purchase or through the exercise of the right of eminent domain, and nothing in this  
22 Franchise shall be construed to contract away or to modify or abridge the City's right of eminent  
23 domain with respect to Grantee.

24 SECTION 15: Noncompliance.

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26 The City, by its City Council, may declare this Franchise forfeited, if the Grantee fails,  
27 neglects or refuses to comply with any of the provisions or conditions of this Franchise, and does  
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1 not within thirty (30) days after written demand for compliance begin the work of compliance, or  
2 after such beginning, does not prosecute the work with due diligence to completion. Provided,  
3 however, that Grantee shall be afforded due process including reasonable notice and reasonable  
4 opportunity to cure any noncompliance prior to the commencement of any termination  
5 proceedings.

6 The City may sue in its own name for the forfeiture of this Franchise, in the event of  
7 noncompliance with any of the provisions or conditions thereof by Grantee.

8  
9 SECTION 16: Written Acceptance Required.

10 This Franchise shall become effective when Grantee files written acceptance hereof with  
11 the City Clerk which shall be within thirty (30) days after the adoption of this Ordinance. Such  
12 written acceptance shall constitute a continuing agreement by the Grantee that if and when the  
13 City later annexes, or consolidates with, additional territory, all franchises, rights and privileges  
14 owned by the Grantee therein shall be deemed abandoned and subsumed by this Ordinance within  
15 the limits of the additional territory.

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17 SECTION 17: Bond.

18 The Grantee shall file within thirty (30) days after the date of the granting of the Franchise  
19 and at all times during the life of this Franchise keep on file, with the City Council a corporate  
20 surety bond running to the City, in the penal sum of Five Thousand Dollars (\$5,000.00)  
21 conditioned that the Grantee shall well and truly observe, fulfill and perform each and every term  
22 and condition of this Franchise, and that in the case of any breach of condition of the bond, the  
23 whole amount of the penal sum therein named shall be recoverable from the principal and surety  
24 upon the bond. If the bond is not so filed, or does not receive the approval of the City Council, the  
25 Franchise may be refused or forfeited and any money paid to the City in connection therewith  
26 shall be retained by the City. Grantee shall reinstate the bond limit or provide a replacement bond  
27 in the original amount within 30 days after notice from the City that any amount has been  
28 recovered from the bond.

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2       SECTION 18: Municipal Public Lands Use Surcharge.

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4       In addition to, and not in lieu of, payment of the franchise fee pursuant to Section 6  
5 herein, Grantee shall collect and remit any applicable surcharge applied to electricity transported  
6 over the Facilities, pursuant to §6350 *et seq.* of the California Public Utilities Code.

7       SECTION 19: Notices and Communications.

8  
9       All notices, demands, approvals, consents, or other communications required or desired to  
10 be given under this Ordinance shall be mailed, delivered or transmitted to the party involved at  
11 the address indicated below:

12       If to Grantee:               Southern California Edison Company  
13                                       Local Public Affairs  
14                                       C/o Local Governmental Affairs  
15                                       2244 Walnut Grove Avenue  
   (626) 302-4904       (626) 302-6870 (fax)

16       If to City:                   City Clerk  
17                                       City of Colton  
18                                       650 N. La Cadena Dr.  
   Colton, CA 92324  
   (909) 370-5032       (909) 370-5154 (fax)

19       Each such notice, demand, approval, consent or other communication shall be deemed  
20 effective and given (i) upon receipt, if personally delivered, (ii) upon being transmitted, if sent by  
21 electronic form, such as email, telegram, telex or telecopy, if a copy of the notice is also sent by  
22 United States Certified Mail and provided receipt is confirmed by a transmission report or  
23 otherwise, (iii) two (2) business days after deposit in the United States mail, certified and postage  
24 prepaid, properly addressed to the part to be served or (iv) upon receipt if sent in any other way.  
25 Any part hereto may from time to time, by written notice to the other, designate a different  
26 address than that set forth above for the purposes of notice, provided however, that no notice of a  
27 change of address shall be effective until actual receipt of the notice.  
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1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN BERNARDINO) ss.  
3 CITY OF COLTON )

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I, EILEEN C. GOMEZ, City Clerk of the City of Colton, do hereby certify that foregoing Ordinance No. \_\_\_\_\_ was duly and regularly adopted by the City Council of the City of Colton at a regular meeting thereof on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and that the same was passed and adopted by the following vote, to wit:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Eileen C. Gomez, City Clerk

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**Exhibit A**  
**Verified Statement of Gross Receipts**

[Attached behind this page.]

**SOUTHERN CALIFORNIA EDISON COMPANY  
FRANCHISE STATEMENT**

For the Calendar Year Ended December 31, 2010  
City of Colton  
San Bernardino County Franchise Ordinance No. 789

Computation of franchise payment: Two percent (2%) of gross annual receipts arising from use, operation, or possession of franchise in the City, plus Direct Access Municipal Surcharge.

Item

1.	Gross annual receipts derived from sale of electricity in all service areas:	\$11,274,358,543
2.	Original cost of electric plant, exclusive of electric plant held for future use, intangible plant, new construction work not yet in operation and rental properties.	\$31,705,515,201
3.	Original cost of transmission and distribution systems, consisting of towers, poles, underground conduits, conductors, line transformers, services and appurtenances.	\$13,881,221,706
4.	Gross annual receipts allocable to transmission and distribution systems:	
	Item 1 x <u>Item 3</u>	\$ 4,936,108,735
	Item 2	
5.	Total miles of transmission and distribution systems.	76,462.76
6.	Miles of transmission and distribution systems under franchise in City.	37.32
7.	Gross annual receipts arising from use, operation, or possession of franchise:	
	Item 4 x <u>Item 6</u>	\$ 2,409,219.57
	Item 5	
8.	Subtotal - Two percent (2%) of item 7.	\$ <u>48,184.39</u>
9.	Direct Access Municipal Surcharge	\$ 16.12
10.	<b>FRANCHISE PAYMENT</b>	<b>\$ <u>48,200.51</u></b>

**VERIFICATION**

**CERTIFICATE**

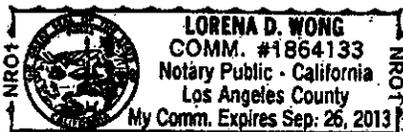
State of California  
County of Los Angeles

On March 10, 2011, before me, Lorena D. Wong, personally appeared Jeff Duran, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

I hereby certify that the foregoing Franchise Statement is based on the Company's accounting records for the year ended December 31, 2010, and accurately reflects the use of such records in the preparation thereof to the best of my knowledge and belief.



Signature Lorena D. Wong

Jeff Duran  
Jeff Duran  
Assistant Controller